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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 JORGE RAMOS-BARAJAS,

11 Defendant.

Case No. 2:18-cr-0259-KJD-GWF

**ORDER**

12 Before the Court is Magistrate Judge Foley's Findings and Recommendation (#35) on  
13 Defendant Jorge Ramos-Barajas's Motion to Dismiss (#22). Ramos-Barajas filed objections to  
14 that recommendation (#39), and the Government responded (#40). Magistrate Judge Foley heard  
15 argument on the Motion to Dismiss on March 12, 2019. He then ordered supplemental briefing  
16 on whether Ramos-Barajas was prejudiced during his 2012 removal proceeding when the  
17 Immigration Judge did not advise him of the ability to apply for discretionary relief from  
18 removal. (#35 at 3). The Government filed its supplemental brief (#33), and Ramos-Barajas  
19 replied (#34). After considering the parties' supplemental briefing, Magistrate Judge Foley  
20 concluded that Ramos-Barajas was not prejudiced because it was not plausible that he would  
21 have qualified for voluntary removal. He recommends that the Court deny Ramos-Barajas's  
22 Motion to Dismiss. The Court has conducted a de novo review under 28 U.S.C. § 636(b)(1) and  
23 LR IB 3-2. The Court agrees with Magistrate Judge Foley and therefore adopts his findings and  
24 recommendation.

25 Ramos-Barajas's Motion to Dismiss turns on whether he suffered prejudice in his 2012  
26 removal proceeding. He suffered prejudice if he can show that it was plausible that he could have  
27 received discretionary relief from removal. United States v. Raya-Vaca, 771 F.3d 1195, 1206  
28 (9th Cir. 2014). While he need not prove that such relief was probable, Ramos-Barajas must

1 show more than a “theoretical possibility of relief.” Id. at 1207 (internal quotations omitted)  
2 (citing United States v. Reyes-Bonilla, 671 F.3d 1036, 1050 (9th Cir. 2012)). Each defendant  
3 presents different positive and negative factors that support or impede discretionary relief.  
4 United States v. Valdez-Novoa, 780 F.3d 906, 917 (9th Cir. 2015). Positive factors could include  
5 the defendant’s length of residence in the United States, his family ties within the United States,  
6 or humanitarian considerations. Negative factors include the defendant’s criminal history and the  
7 likelihood that he would reoffend. The Court compares the specific facts of the defendant’s case  
8 with similar defendants that received—or did not receive—discretionary relief from removal. Id.  
9 at 916.

10 Ramos-Barajas presented no positive factors to support discretionary relief. Rather, he  
11 argued that his minor criminal history—one prior drug charge—should not disqualify him. He  
12 cited to various cases where other defendants with more severe negative factors received  
13 discretionary relief. However, without a single positive factor to lean on, Magistrate Judge Foley  
14 distinguished those cases. As a result, he found that it was not plausible that Ramos-Barajas  
15 would qualify for voluntary removal and recommended that the motion to dismiss be denied. The  
16 Court sees no reason to disturb that finding.

17 IT IS THEREFORE ORDERED that the Magistrate Judge’s Findings and  
18 Recommendation (#35) is **ADOPTED** and **AFFIRMED**, and defendant Jorge Ramos-Barajas’s  
19 Motion to Dismiss (#22) is **DENIED**.

20 Dated this 16th day of May, 2019.

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23 Kent J. Dawson  
24 United States District Judge  
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